

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 302 OF 2001.

Shri Joseph Mascarenhas,
resident of Rawalfond, Aquem-Bairo,
Post Navelim, Salcete, Goa.

.... Petitioner.

Versus

1. Industrial Tribunal,
Government of Goa,
Junta House, 2nd Floor,
Panaji, Goa.

2. Labour Commissioner,
Junta House, 1st Floor,
Panaji, Goa.

3. M/s Morning Star confectioners,
(Morning Star Bakery),
Kamat Commercial Building,
2nd Floor, Station Road,
Margao, Goa.

4. State of Goa,
(Through the Secretary (Labour)),
Secretariat, Panaji, Goa.

5. M/s Morning Star Confectioners Pvt. Ltd.,
2nd Floor, Kamat Commercial Building,
Station Road, Margao, Goa.

..... Respondents.

Shri S. G. Bhobe, Advocate for the Petitioner.

Shri N.N. Sardesai, Advocate for the Respondent No.5.

CORAM: DR. S. RADHAKIRSHNAN, J.

DATE: 29th SEPTEMBER, 2006.

ORAL JUDGMENT:

1. Heard learned Counsel for the Petitioner and the Respondents.
2. By this petition the petitioner is challenging the Award of the learned Industrial Tribunal, at Panaji, dated 20th October, 2000 whereby the Industrial Tribunal has held that the reference itself was not maintainable and rejected the same.
3. The brief facts are that the petitioner-workman claims to be a workman of Morning Star Bakery. The workman also contends that Morning Star Bakery was a sole proprietary firm of one John Fernandes. It is the case of the petitioner-workman that the said Morning Star Bakery was later converted into M/s. Morning Star Confectioners Pvt. Ltd. The petitioner contends that initially he joined as a Baker and he worked continuously till his services were terminated with effect from 27.9.91. He had also relied on an inspection report to indicate that he was employed by Morning Star Bakery. It is the case of the petitioner that subsequent to his termination, the said Morning Star Bakery was converted into M/s Morning Star Confectioners Pvt. Ltd. It appears that Conciliation proceedings were adopted and the Conciliation proceedings resulted in a failure report and the Government had made a reference. In the reference, the petitioner-workman had pointed out that there was a mistake in the reference and got

the reference amended by Corrigendum dated 17.4.95 wherein the Corrigendum made it clear that instead of the words “M/s. Morning Star Confectioners Pvt. Ltd.”, in the first para and 2nd line of Item no.2 of the schedule of the earlier Government order, were substituted by the words “M/s Morning Star Confectioners (Morning Star Bakery)”.

4. Before the learned Industrial Tribunal, the petitioner-workman had been examined and no other evidence was led. The learned Tribunal had framed various issues and one of the issues was Issue No.4 which reads as under :-

“ Whether the Party II proves that the reference made by the Government is null and void and hence liable to be rejected ? ”

5. The main discussion in the Award is with regard to the Issue No.4. The learned Tribunal has in a detailed manner analysed the evidence tendered by the workman and has observed as under in paragraph 11 :-

“... In the present case the conciliation proceedings do not show that the dispute was raised against Morning Star Confectioners. The evidence of the workman also does not show that the dispute was raised against Morning Star

Confectioners. The evidence of the workman shows that the dispute is raised against M/s Morning Star Confectioners Pvt. Ltd., which is a private limited company who according to the workman had taken over Morning Star Bakery. The workman nowhere in his evidence has stated that Morning Star Confectioners and Morning Star Bakery is one and the same establishment. There is also nothing in the records of the conciliation proceedings to show that Morning Star Confectioners and Morning Star Bakery is one and same establishment. Infact there is no reference to Morning Star Confectioners in the records of the conciliation proceedings. The workman in his evidence has sought relief against M/s Morning Star Confectioners Pvt. Ltd., and not against Morning Star Confectioners. The Memorandum of Association produced at Exb.W-2 shows that what is taken over by the M/s Morning Star Confectioners Pvt. Ltd., is the establishment run in the name and style of "Morning Star Bakers and Confectioners" and not Morning Star Bakery as contended by the workman. There is no averment either in the statement of claim or in the evidence of the workman that "Morning Star Bakery" and "Morning Star Bakers and Confectioners" is one and the same establishment. In the light of what is discussed above, I hold that the dispute which has been referred by the Government is not an industrial dispute as there was no demand on Morning Star Confectioners either directly or indirectly and hence the reference is null and void and not maintainable and is liable to be rejected. I, therefore answer the issue no.4 in the affirmative. "

6. From the above it is very clear that the workman has never

contended at any stage that “ Morning Star Bakery “ and “M/s Morning Star Confectioners” are one and the same and that they were later converted into a Private Limited Company known as M/s Morning Star Confectioners Pvt. Ltd.. Under the aforesaid facts and circumstances, there is absolutely no error apparent on the face of the record and there is no perversity in the above Award.

7. Hence Writ Petition is totally devoid of substance. Rule stands discharged.

DR. S. RADHAKRISHNAN, J.

sl.